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OFFICE OF PETITIONS

In re Application of
Pajunen et al.
Application No. 10/082,507
Filed: October 19, 2001
Attorney Docket No. 05004146-001US1

:DECISIONS ON PETITIONS
:UNDER 37 CFR §1.78(a)(3)
:AND UNDER
:§37 CFR 1.55 (c)
:

This is a decision on the petition under 37 CFR §1.78(a)(3), and 37 CFR §1.55 (c) filed on July 8, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 and 365 (c) for the benefit of prior- filed PCT application and under 35 USC §119 (a)-(d) and (f) for the benefit of prior filed foreign application as set forth in the concurrently filed application data sheet and amendment.

The petitions are **GRANTED**.

As to the benefit claim under 37 CFR §1.78(a)(3):

A petition under 37 CFR §1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §1.78(a)(2)(ii), and must be filed during the pendency of the nonprovisional application. In addition, the petition must accompanied by:

- (1) the surcharge as set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed as unintentional; and
- (3) the reference to the prior filed nonprovisional application, supplied in an application data sheet, or the specification must contain or be amended to contain such reference in the first sentence following the title. See 35 USC §§120 and 37 CFR §1.78(a)(2). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on October 19, 2001 and was pending at the time of the filing of the instant petition. A reference to the prior-filed application has been included in an application data sheet (ADS) and in an amendment to the specification. It is noted that the ADS includes, under "Domestic Priority Information" an indication that PCT/EP00/03631 claims domestic benefit to EP99107354.5 (EP '354.5). This is not a proper domestic benefit claim as EP '354.5 is not a US Patent Application. See 35 USC 119(e), 120, 365(c) and 37 CFR 1.78. Petitioner has properly claimed foreign priority to EP '354.5 under the "Foreign Priority Information" section of the ADS. Since the petition correctly does not assert that the delayed claim to EP '354.5 should be accepted under 37 CFR 1.78, but rather accepted under 37 CFR 1.55, the petition has not been treated as requesting acceptance of an unintentionally delayed domestic benefit claim to EP '354.5. Applicant may correct the error in the ADS via a supplemental ADS. See 37 CFR 1.76 (d) (4).

The instant nonprovisional application was filed after November 29, 2000 and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR §1.78 (a) (2)(ii). The reference to the prior-filed PCT application was submitted during the pendency of the instant nonprovisional application for which the claim for benefit of priority is sought. See 35 USC §§120 and 365 (c). Accordingly having found that the instant petition for acceptance of an unintentionally delayed claim for benefit of priority under See 35 USC §§120 and 365(c) to the prior- filed application satisfies the conditions of 37 CFR §1.78(a)(3), the petition is granted.

As to the benefit claim under 37 CFR §1.55 (c):

A petition under 37 CFR §1.55 (c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country and the filing date;
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR §1.55(a)(1) and the date the claim was filed was unintentional. (The Director may require additional information where

- there is a question whether the delay was unintentional.); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The above-identified pending nonprovisional application was filed on October 19, 2001 which is after November 29, 2000, and the intermediate PCT application was filed within 12 months of April 21, 1999 of which is the earliest filing date of the foreign application to which benefit is claimed. The application data sheet filed on July 8, 2004 also identifies the foreign application to which benefit is claimed. A certified copy of the foreign patent document was filed on October 19, 2001. Lastly petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR §1.55 (c) to accept an unintentionally delayed claim for priority under 35 USC §119-(a)-(d) and (f) is granted.

A corrected filing receipt, which includes priority claim to the prior filed PCT application, and the foreign priority claim, accompanies this decision on the petition.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR §1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365 (c) and 37 CFR §1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center 1700 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 USC §§ 120 and 365 (c) to the prior-filed PCT applications and for consideration of the claim for priority under 35 USC §119 for the benefit of the foreign application as set forth in the concurrently filed amendment and application data sheet.

Telephone inquiries concerning this matter may be directed to Charlema Grant at (571) 272-3215.


Charles Pearson
Director
Office of Petitions



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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLM
10/082,507	10/19/2001	1761	942	05004146-001US1	6	24	2

CONFIRMATION NO. 5

CORRECTED FILING RECEIPT
***OC00000001587162**
OC000000015871623

29739
 SMITH MOORE LLP
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Date Mailed: 04/26/2

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

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Power of Attorney: The patent practitioners associated with Customer Number 29739.

Domestic Priority data as claimed by applicant

This application is a CON of PCT/EP00/03631 04/20/2000

Foreign Applications

EUROPEAN PATENT OFFICE (EPO) EP99107354.5 04/21/1999

If Required, Foreign Filing License Granted: 03/21/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/082,507

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method and apparatus for the continuous biocatalytic conversion of aqueous solutions, having one or more degassing stages

Preliminary Class

426

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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

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NOT GRANTED

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